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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
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**Commission on Crime Prevention and Criminal Justice**
**Ninth session**
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Item 4 of the provisional agenda*
**International cooperation in combating transnational crime: elaboration of an international convention against transnational organized crime and other possible international instruments**

## Progress report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

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* E/CN.15/2000/1.

# I. Introduction

1. On the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council (Council resolution 1998/14 of 28 July 1998), the General Assembly adopted resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea. In its resolution 53/114 of 9 December 1998, the Assembly called upon the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to devote attention to the drafting of the main text of the Convention, as well as of the above-mentioned international instruments.

2. In its resolution 54/126 of 17 December 1999, entitled "Draft United Nations Convention against Transnational Organized Crime and the draft protocols thereto", the General Assembly requested the Ad Hoc Committee to continue its work, in accordance with resolutions 53/111 and 53/114, and to intensify its work in order to complete it in 2000; decided that the Ad Hoc Committee should be convened in 2000 as required, holding no fewer than four sessions of two weeks each; requested the Ad Hoc Committee to schedule sufficient time, subject to the availability of funds from the regular budget or extrabudgetary resources, for the negotiation of the draft protocols addressing trafficking in persons, especially women and children, the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, in order to enhance the possibility of their completion at the same time as the draft Convention; and decided that the Ad Hoc Committee should submit the final text of the Convention and protocols thereto to the Assembly for early adoption prior to a high-level signing conference.

3. In its resolution 54/127 of 17 December 1999, the General Assembly requested the Secretary-General, within existing or extrabudgetary resources, to convene an expert group of no more than 20 members with equitable geographical representation, to prepare a study on the illicit manufacturing of and trafficking of explosives by criminals and their use for criminal purposes, and directed the Ad Hoc Committee, following the completion of the study, to consider the possible elaboration of an international instrument on the illicit manufacturing of and trafficking in explosives.

4. In its resolution 54/128 of 17 December 1999, the General Assembly directed the Ad Hoc Committee to incorporate into the draft Convention measures against corruption linked to organized crime, including provisions regarding the sanctioning of acts of corruption involving public officials; and requested the Ad Hoc Committee, using such time as its schedule permitted and with extrabudgetary resources provided for that purpose, to explore the desirability of an international instrument against corruption, either ancillary to or independent of the Convention, to be developed after the finalization of the Convention and the three additional instruments referred to in resolution 53/111, and to present its views to the Commission on Crime Prevention and Criminal Justice.

5. In its resolution 54/129 of 17 December 1999, the General Assembly accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against

Transnational Organized Crime (Palermo Convention) and protocols thereto, and requested the Secretary-General to schedule the Conference for a period of up to one week before the end of the Millennium Assembly in 2000.

6. To date, the Ad Hoc Committee has held eight sessions, as follows: first session from 19 to 29 January 1999; second session from 8 to 12 March 1999; third session from 28 April to 3 May 1999, in parallel with the eighth session of the Commission on Crime Prevention and Criminal Justice; fourth session from 28 June to 9 July 1999; fifth session from 4 to 15 October 1999; sixth session from 6 to 17 December 1999; seventh session from 17 to 28 January 2000; and eighth session from 21 February to 3 March 2000. It is scheduled to hold two more sessions, from 5 to 16 June and from 17 to 28 July 2000.

7. The present report is submitted to the Commission on Crime Prevention and Criminal Justice pursuant to General Assembly resolution 54/126, to apprise the Commission of progress achieved in the implementation of the mandate of the Ad Hoc Committee. Read in conjunction with the previous report of the Ad Hoc Committee to the Commission at its eighth session (A/AC.254/13-E/CN.15/1999/5), the present report provides a complete picture of the work of the Ad Hoc Committee to date.

# II. Progress in the implementation of the mandate of the Ad Hoc Committee

## A. Organizational and procedural matters

8. In its resolution 53/111, the General Assembly decided to accept the recommendation of the Commission to elect Luigi Lauriola (Italy) as the Chairman of the Ad Hoc Committee. The following additional officers compose the bureau of the Ad Hoc Committee for 2000:

*Vice-Chairmen*: Zuzana Chuda (Slovakia)
Kiyoshi Koinuma (Japan)
Emna Lazoughli (Tunisia)
Patricio Palacios (Ecuador)
Olga Pellicer (Mexico)
Bérengère Quincy (France)
Janusz Rydzkowski (Poland)
Shaukat Umer (Pakistan)

*Rapporteur*: Peter Gastrow (South Africa)

9. In view of the short time available and considering the volume and complexity of the work that the Ad Hoc Committee had to carry out, the Secretariat developed and proposed a provisional timetable of sessions for 1999 and 2000. In so doing, the Secretariat attempted to reconcile the requirements of the Ad Hoc Committee with the need to provide necessary services to it within existing resources for the biennium 1998-1999. With the appropriate planning and with the support of the bureau of the Ad Hoc Committee, the Secretariat was able to absorb the bulk of the cost of providing the Ad Hoc Committee with the requisite conference and interpretation services in 1999. Additional requirements were met through voluntary contributions made by the Governments of Japan and the United

States of America to the Crime Prevention and Criminal Justice Fund, in support of the drafting of the Convention.

10. The third session of the Ad Hoc Committee was attended by representatives of 111 States. Its fourth session was attended by representatives of 97 States. Its fifth session was attended by representatives of 114 States. Its sixth session was attended by representatives of 106 States. Its seventh session was attended by representatives of 109 States. Its eighth session was attended by representatives of 112 States. Also attending the sessions were observers for entities maintaining permanent observer missions to the United Nations, organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.

11. In its resolution 53/111, the General Assembly invited donor countries to cooperate with developing countries to ensure their full participation in the work of the Ad Hoc Committee. That issue was also raised by several delegations and by the Group of 77 and China at the first and second sessions of the Ad Hoc Committee. On two separate occasions, the Secretariat drew the attention of developed countries to the call made by the General Assembly. The Governments of Austria, Japan, Norway, Poland and the United States made voluntary contributions to the Crime Prevention and Criminal Justice Fund, indicating that a part thereof was to be used to facilitate the participation of least developed countries in the work of the Ad Hoc Committee. However, the funds made available were not sufficient to defray the costs of participation of all 48 least developed countries in the work of the Ad Hoc Committee. Therefore, the Secretariat requested the regional groups concerned to determine the least developed countries that would receive some assistance in relation to their participation.

12. At the fourth session of the Ad Hoc Committee, the Secretariat offered support to 25 countries selected by or identified in consultation with the regional groups concerned. This support related to meeting the travel costs only of one representative from each of the countries concerned. Most of the countries to which the Secretariat offered support indicated that they were willing to participate in the work of the Ad Hoc Committee but were unable to cover the cost of accommodation for their representatives. In view of that experience and having reviewed the extrabudgetary resources at its disposal, the Secretariat offered, beginning with the fifth session of the Ad Hoc Committee, to provide further support consisting of a lump sum intended to assist representatives with meeting the cost of accommodation.

13. At its seventh session, the Officer-in-Charge of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention informed the Ad Hoc Committee that the Secretariat was encountering difficulties in obtaining the required authorization from the Controller in the Department of Management of the Secretariat for payment of the local costs of representatives from least developed countries, using extrabudgetary funds made available by certain Governments. Those difficulties stemmed from the fact that the Controller maintained that General Assembly resolution 53/111 did not provide a sufficient basis for departing from established rules and practice regarding the payment of such expenses. The Chairman informed the participants that the matter had been discussed in the bureau of the Ad Hoc Committee, which had recommended that the Ad Hoc Committee approve a draft resolution on the matter for adoption by the Assembly. The bureau had also recommended that the Ad Hoc Committee authorize its Chairman to write to the Secretary-General and request that he personally intervene in order to resolve

the matter. The Ad Hoc Committee approved the recommendation of its bureau. The Ad Hoc Committee also approved a draft resolution submitted by its Chairman, entitled "Participation in the work of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime" (A/AC.254/L.136). (For the text of the draft resolution, see annex II to the report of the Ad Hoc Committee on its seventh session (A/AC.254/25).) The Chairman wrote to the Secretary-General and to the Chairman of the Fifth Committee of the General Assembly. The Ad Hoc Committee was subsequently informed by its Chairman that the matter had been resolved for the seventh session. The Chairman requested that the Secretariat keep the matter under review in order to ensure that similar payments would be made at the remaining sessions of the Ad Hoc Committee, subject to the availability of extrabudgetary funds provided for that purpose.

14. At its eighth session, the Ad Hoc Committee was informed by its Chairman that a solution had been found to the problem of assistance provided to a number of least developed countries by the Secretariat, using extrabudgetary funds provided for that purpose. The Chairman called upon States to make voluntary contributions that would permit the Secretariat to continue providing assistance to least developed countries to enable them to participate in the remaining sessions of the Ad Hoc Committee, as well as to meet the costs of conference and interpretation services for the informal consultations held during the sessions of the Ad Hoc Committee.

15. At the first session of the Ad Hoc Committee, several representatives had expressed concern about the accuracy of the terms used in the translation of documents into some of the official languages, and had recommended that the Secretariat undertake the compilation of a glossary of terms. Pursuant to that recommendation and with the support of the Linguistic Support Unit and the translation sections of the United Nations Office at Vienna, the Secretariat prepared a draft glossary of terms found in the draft Convention and made it available to delegations at the fourth and fifth sessions of the Ad Hoc Committee (A/AC.254/CRP.16 and Add.1). The draft glossary was based on the revised text of the draft Convention contained in document A/AC.254/4/Rev.1 and was distributed with a view to allowing participants to review the terms and provide feedback to the Secretariat on their accuracy and consistency. Work was continuing to include in the glossary terms contained in the three additional international legal instruments that the Ad Hoc Committee had been mandated to draft. Upon completion of the drafting of the Convention and the protocols thereto, the revised glossary would form part of the official record of the negotiations.

16. At its fourth session, the Ad Hoc Committee decided that in future informal consultations should be organized in order to facilitate the implementation of its mandate. The holding of such meetings would depend on the availability of extrabudgetary resources and would meet the following conditions:

(a) The informal consultations would be conducted strictly in accordance with the decisions of the General Assembly;

(b) Provision would be made for interpretation in all official languages of the United Nations;

(c) The documentation and agenda for the informal consultations would be made available well in advance of the meetings and sufficient advance notice of the time and place of the meetings would be provided;

(d) The informal consultations would be an open-ended and transparent mechanism to assist the Ad Hoc Committee, which would remain the only decision-making body, by making recommendations;

(e) The informal consultations would be held only as parallel in-session meetings and their subjects would not overlap those being considered by the Ad Hoc Committee in plenary;

(f) No more than two meetings, including the plenary, would be held at the same time during the sessions of the Ad Hoc Committee;

(g) The informal consultations could be assigned, *inter alia*, to translate into appropriate language the agreements reached in plenary or any other function determined by the Chairman of the Ad Hoc Committee.

17. At the fifth session of the Ad Hoc Committee, the representative of Ecuador made a statement on behalf of the Group of Latin American and Caribbean States. He stressed that, while the members of the Group would continue to give their full support to the work of the Ad Hoc Committee, their ability to participate in the informal meetings of the Ad Hoc Committee was limited. The Ad Hoc Committee was the only body empowered to advance the negotiations on the draft Convention and its draft Protocols; therefore, any parallel meetings were only of an informal nature. The representatives of Costa Rica and Mexico noted that the informal meetings should not deal with any new topics. The Chairman confirmed that that was his understanding.

18. At the seventh session of the Ad Hoc Committee, the representative of Ecuador, speaking on behalf of the Group of Latin American and Caribbean States, said that the members of the Group had, from the beginning, participated actively and constructively in the negotiations on the draft Convention and its draft Protocols, convinced of the importance of those negotiations. The members of the Group had supported the initiative of the States members of the Group of 77 and China at the sixth session of the Ad Hoc Committee regarding the inclusion in the draft Convention of an article on implementation of the Convention through economic development and technical assistance. While expressing the hope that the pace of negotiations would be vigorous, the members of the Group of Latin American and Caribbean States were of the view that sufficient time and attention should be given to drafting coherent and functional provisions that would meet the concerns of all States. The universality of the legal instruments depended not only on the number of signatories but also on the quality of the texts. Regarding the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the "Migrants Protocol", A/AC.254/4/Add.1/Rev.4), the members of the Group were of the view that it was important to develop a legal instrument that would effectively target smugglers while protecting the rights of migrants. Therefore, the Protocol must take into account the relevant United Nations instruments on protection of migrants in connection with correcting social and economic imbalances. In an era of globalization, the Convention and the Protocols should be inspired by the need for international cooperation to contribute to the improvement of standards of living and to increase opportunities, especially in developing countries. The members of the Group of Latin American and Caribbean States considered it important for the Migrants Protocol not to penalize migration, which was a social and historical phenomenon, or to convey an ambiguous message to the international community that would stimulate xenophobia, intolerance and racism. The negotiation process should take into account the causes of migration and the reasons for the increasing

vulnerability of migrants. Regarding the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the "Trafficking in Persons Protocol", A/AC.254/4/Add.3/Rev.5), the members of the Group emphasized the need for the instrument to make it possible to react quickly to illicit trafficking in persons, especially when the victims were children. The representative emphasized the position of global leadership of the Group in the fight against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The representative announced that the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (A/53/78, annex), adopted by the General Assembly of the Organization of American States, would enter into force on 9 February 2000, following the deposit of the tenth instrument of ratification. The members of the Group of Latin American and Caribbean States were interested in ensuring the successful conclusion of the negotiations on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (the "Firearms Protocol"), in order for the instrument to be effective. The members of the Group were in favour of a recommendation by the Ad Hoc Committee to the Commission on Crime Prevention and Criminal Justice regarding the development of a broad international legal instrument against corruption. The representative noted that the principal objective and premise of the Convention and its Protocols should be to promote international cooperation through shared responsibility in order to achieve more balanced international conditions, taking into account the situation of developing countries and with full respect for the principles of sovereignty and non-intervention enshrined in the Charter of the United Nations.

19. Prior to the adoption of the report of the Ad Hoc Committee on its seventh session, the representative of Uruguay made a statement on behalf of the Group of 77 and China. He underlined the importance of producing acceptable and effective results through methodical and conscientious work and requested that the necessary time be taken during the negotiation process to address complex matters comprehensively. Regarding the scope of application of the Convention, he stated that it was not possible for the Convention to include provisions that did not relate to acts of a transnational character or to the conduct of organized criminal groups. He recognized that, in the spirit of international cooperation, the provisions of the Convention relating to judicial assistance might be applied where the offence was serious and involved an organized criminal group. He stated that the members of the Group of 77 and China had reaffirmed their commitment to the negotiation process and had pledged their continued support to the successful conclusion of the Convention. He emphasized that the final decision on the adoption of the Convention would be taken at the political level, by the General Assembly.

20. At the eighth session of the Ad Hoc Committee, the representative of Uruguay, speaking on behalf of the Group of 77 and China, recalled the need to ensure that delegations had the necessary time to study carefully the contents of documents considered as the basis for consensus. He expressed concern about the timely availability of documents in all official languages of the United Nations. He also stated that informal working groups set up during the negotiation process were responsible for proposing language, but that their work must be approved by the Ad Hoc Committee. In addition, the representative of Uruguay reiterated the position of the Group of 77 and China, stated during the seventh session of the Ad Hoc Committee, that to avoid any possible ambiguity regarding the

application of the Convention, the words "transnational" and "organized criminal group" should appear in the scope of application and whenever necessary elsewhere to explain the type of organized criminal activity that the Convention sought to address. Finally, in the view of the Group of 77 and China, two meetings of informal consultations should not be held simultaneously and informal consultations served only as a forum for the exchange of views.

21. Also at the eighth session of the Ad Hoc Committee, the representative of Portugal, speaking on behalf of the States members of the European Union that are Members of the United Nations, informed the Ad Hoc Committee that the representative of the European Commission had been mandated by the Council of the European Union to negotiate on behalf of 12 of the States members of the Union articles 9, 11, 12 and 13 of the draft Migrants Protocol. The Chairman stated that the Ad Hoc Committee would take note of that statement on the understanding that the mandate would not affect the observer status of the European Commission.

22. At the time of writing of the present report, the Ad Hoc Committee had scheduled two more sessions for 2000. The Ad Hoc Committee will hold its ninth session from 5 to 16 June and its tenth session from 17 to 28 July.

## B. Substantive matters

### 1. Elaboration of the draft Convention against Transnational Organized Crime

23. At its second session, the Ad Hoc Committee had requested the Secretariat to carry out an analytical study on provisions of national laws relevant to the Convention concerning offences punishable by deprivation of liberty, with an indication of the number of years of imprisonment. The study was to be based on information to be solicited from Member States, who would also be asked to indicate whether their legislation qualified offences as serious and, if so, what criteria were used and which crimes were considered serious. Pursuant to that request and based on information provided by 45 States, the Secretariat prepared the analytical study and submitted it to the Ad Hoc Committee (A/AC.254/22 and Corr.1 and Add.1).

24. At its third to eighth sessions, the Ad Hoc Committee had before it, in addition to the documents prepared by the Secretariat, documents containing proposals and contributions submitted by the Governments of Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Cameroon, Canada, China, Colombia, Finland, France, Germany, the Holy See, Hungary, India, Italy, Japan, Kuwait, the Libyan Arab Jamahiriya, Lithuania, Malawi, Mexico, Morocco, the Netherlands, New Zealand, Norway, Peru, the Philippines, Poland, the Russian Federation, Singapore, Slovakia, South Africa, Spain, Swaziland, Switzerland, Sweden, the Syrian Arab Republic, Tajikistan, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States. The Ad Hoc Committee also had before it notes by the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration (A/AC.254/16 and A/AC.254/27 and Corr.1).

25. The Ad Hoc Committee had completed its first reading of the draft Convention at its first and second sessions and had begun a second reading of the text at its second session. At its third session, the Ad Hoc Committee focused on articles 4, 4 *bis*, 7 and 8 of the draft

Convention, dealing with money-laundering, confiscation and transparency of financial transactions. Basing its work on the revised version of the draft Convention (A/AC.254/4/Rev.2) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.5 and 6), the Ad Hoc Committee decided to delete article 8 from the draft text of the Convention, as its contents had been superseded by either option of article 4 *bis*. The progress achieved by the Ad Hoc Committee at its third session was reflected in a new version of the draft Convention.

26. Continuing the second reading of the draft Convention at its fourth session and basing its work on the revised version of the draft Convention (A/AC.254/4/Rev.3) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.7 and 8), the Ad Hoc Committee discussed articles 4 *ter*, 5, 6, 9 and 14 (paras. 1-13). The comments and proposals made by delegations were reflected in a revised version of the draft Convention.

27. At its fifth session, the Ad Hoc Committee based its work on a document containing the revised draft Convention (A/AC.254/4/Rev.4) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.7-9). The Ad Hoc Committee discussed articles 4, 4 *bis*, 7, 7 *bis*, 7 *ter*, 10, 14 (paras. 14-22), and 15-19 of the draft Convention. The progress achieved by the Ad Hoc Committee at its fifth session was reflected in a new version of the draft Convention.

28. At its sixth session, the Ad Hoc Committee based its work on the revised text of the draft Convention (A/AC.254/4/Rev.5) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.14). In completing its second reading of the draft Convention and in accordance with the request by the Chairman, the Ad Hoc Committee sought to reach agreement on a single text that would reflect the points of convergence and would form the basis for further drafting. The progress achieved on the draft Convention by the Ad Hoc Committee at its sixth session was reflected in a new version of the draft Convention.

29. As mentioned above, the Ad Hoc Committee had decided at its fourth session that, in future, informal consultations should be organized in order to facilitate the implementation of its mandate. At its fifth session, the Ad Hoc Committee had decided that the informal consultations at its sixth session would be devoted to an overview of provisions that could be considered common to the draft Convention and the draft Protocols and to an examination of the articles of those draft instruments that would be under discussion at its sixth session. During the sixth session of the Ad Hoc Committee, informal consultations were held from 7 to 10 December 1999 in parallel with the plenary meetings of the Ad Hoc Committee. The recommendations of the informal consultations (A/AC.254/L.109 and A/AC.254/L.120) were submitted to the Ad Hoc Committee by the chairmen of the informal consultations. The Ad Hoc Committee approved the recommendations of the informal consultations on the common provisions of the draft Convention and the draft Protocols. The Ad Hoc Committee carried out its work on articles 4 *ter*, 20, 22 and 22 *bis* on the basis of the recommendations of the informal consultations.

30. At its seventh session, the Ad Hoc Committee based its work on the revised text of the draft Convention (A/AC.254/4/Rev.6) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.17). Having completed the second reading of the draft Convention at its sixth session, the Ad Hoc Committee, in accordance with the relevant recommendation of its Chairman, began the process of reaching agreement on the final text. The Ad Hoc Committee approved articles 1 and 5 of the draft Convention, without amendment, and provisionally approved paragraphs 3 and 4 of article 2, as amended.

However, it decided to keep paragraphs 1 and 2 of article 2 under review and to revert to the text in the light of the results of future negotiations on other articles of the draft Convention that might have a bearing on the scope of the instrument. The Ad Hoc Committee approved subparagraphs (b)-(i) of article 2 *bis*, as amended, but decided to keep the current text of subparagraph (a) as the basis for further consideration, also in connection with article 2 of the draft Convention. The Ad Hoc Committee also decided to reconsider the substance of subparagraph (k) of article 2 *bis* when finalizing the text of article 4 *bis* of the draft Convention. In the discussion on the definition of the term "structured group", the Ad Hoc Committee decided that the *travaux préparatoires* would include a note to the effect that the term was to be used in a broader sense and that it would include both groups with a hierarchical or other elaborate structure and non-hierarchical groups where the roles of the members of the group need not be formally defined. There need not be continuity in the composition of the group. However, the term would not include groups formed on an ad hoc basis for the immediate commission of an offence, such as groups formed randomly in the course of a riot. The Ad Hoc Committee also approved articles 3 and 6 of the draft Convention, as amended. In connection with article 3, the delegation of Colombia was concerned about the formulation of paragraph 3, which could be interpreted as permitting unilateral declarations by States Parties that might amount to reservations. In connection with paragraph 4 of article 6, on early release or parole, the Ad Hoc Committee decided that the *travaux préparatoires* would include a note to the effect that paragraph 4 would not oblige States Parties to provide for early release or parole of imprisoned persons if the legal systems of the States Parties in question did not provide for early release or parole. It was the understanding of the Ad Hoc Committee that paragraph 4 would not apply to those legal systems which did not foresee the possibility of early release or parole. The Ad Hoc Committee decided that, at a later stage in its deliberations, it would ensure consistency in the wording of clauses containing references to national legal principles or systems. The progress achieved by the Ad Hoc Committee at its seventh session was reflected in a new version of the draft Convention.

31. At its sixth session, the Ad Hoc Committee had decided to devote the informal consultations to be held during its seventh session, from 24 to 27 January 2000, to the consideration of articles 4, 4 *bis*, 4 *ter*, 4 *quater*, 7, 7 *bis*, 7 *ter*, 17, 17 *bis*, 18, 18 *bis* and 18 *ter* of the draft Convention, in preparation for the finalization of those articles by the Ad Hoc Committee at its eighth session. The recommendations of the informal consultations were submitted to the Ad Hoc Committee by their chairmen.

32. At its eighth session, the Ad Hoc Committee based its work on the revised text of the draft Convention (A/AC.254/4/Rev.7) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.20). The Ad Hoc Committee discussed articles 2, 2 *bis* (subpara. (a) only), 4, 4 *ter*, 4 *quater*, 7, 7 *bis*, 7 *ter*, 17, 17 *bis*, 18, 18 *bis* and 18 *ter* of the draft Convention. Because of lack of time, article 4 *bis* was not discussed and was, therefore, deferred to the ninth session of the Ad Hoc Committee. The Ad Hoc Committee approved articles 4 *quater*, 7 *bis*, 7 *ter*, 17, 18 and 18 *bis* of the draft Convention, without amendment, and provisionally approved articles 4 (with the exception of subparagraph (c) of paragraph 2, which remained under review), 4 *ter*, 7, 17 *bis* and 18 *ter*, subject to the resolution of some issues that would need to be discussed in the light of the finalization of other provisions of the Convention, in particular article 2. The Ad Hoc Committee discussed article 2 of the draft Convention. It decided to keep paragraphs 1 and 2 of article 2 under review and to revert to the text at its ninth session. It also decided to use as a basis for further consideration of those paragraphs the text proposed by Singapore.

Regarding article 2 *bis* (subpara. (a) only), the Ad Hoc Committee decided to retain the text unchanged and to reflect the debate in the footnotes accompanying the text.

33. At its seventh session, the Ad Hoc Committee had decided to devote the informal consultations to be held at its eighth session from 28 February to 2 March 2000 to the consideration of articles 9, 10, 10 *bis*, 14, 14 *bis*, 15 and 16 of the draft Convention, in preparation for the finalization of those articles by the Ad Hoc Committee at its ninth session. The recommendations of the informal consultations were submitted to the Ad Hoc Committee by their chairmen.

## 2. Elaboration of the additional international legal instrument against trafficking in persons, especially women and children

34. At its second session, the Ad Hoc Committee had requested the Secretariat to clarify whether, by considering trafficking in persons, the Ad Hoc Committee would be departing from the mandate given to it by the General Assembly and, if that were the case, whether it would be competent to do so. The Secretariat consulted the Senior Legal Liaison Officer of the United Nations Office at Vienna and brought his response to the attention of the Ad Hoc Committee at its third session. According to the Senior Legal Liaison Officer, in its resolutions 53/111 and 53/114, the General Assembly had clearly defined the subjects for which new instruments were required. If the Assembly had wanted any other subjects to be included, it would have said so. Moreover, the recommendations of the Economic and Social Council (in its resolutions 1998/14 and 1998/20), which formed the basis for the Assembly resolutions, referred to trafficking in women and children and not to trafficking in persons. Those resolutions had been adopted unanimously and the terms used therein reflected the desires of the Assembly. If, however, the Ad Hoc Committee, after considering the issues before it, had come to the conclusion that, instead of developing an instrument addressing trafficking in women and children, it would be in the general interest to develop an instrument dealing with trafficking in persons, it might wish to request the Assembly to modify its mandate in that connection. States might take advantage for that purpose of the eighth session of the Commission, which was running in parallel to the third session of the Ad Hoc Committee. In its resolution 54/126, the General Assembly decided that the additional international instrument being prepared by the Ad Hoc Committee addressing trafficking in women and children should address trafficking in all persons, but especially women and children, and requested the Ad Hoc Committee to make any corresponding changes to the draft instrument.

35. At its second session, the Ad Hoc Committee had carried out a first reading of articles 1 and 2 of the draft Trafficking in Persons Protocol. At its fourth session, it carried out a first reading of articles 3-7, basing its work on a document containing the revised text of the draft Protocol (A/AC.254/4/Add.3/Rev.2). The progress achieved by the Ad Hoc Committee was reflected in a new version of the draft Protocol.

36. Issues related to the draft protocol were also discussed during the informal consultations held during the fifth session of the Ad Hoc Committee.

37. At its sixth session, the Ad Hoc Committee discussed the draft Protocol, with particular emphasis on articles 8-18. The Ad Hoc Committee decided to base its work on the restructured version of the revised draft Protocol contained in document A/AC.254/5/Add.13, as had been recommended by the informal consultations held during the fifth session of the Ad Hoc Committee, and on other proposals and contributions submitted by Governments (A/AC.254/5/Add.16). At its sixth session, the Ad Hoc

Committee completed its first reading of the draft Protocol, aware of the discussion in the informal consultations on the common provisions between the draft Convention and the draft Protocols. The progress achieved on the draft Trafficking in Persons Protocol by the Ad Hoc Committee at its sixth session (A/AC.254/L.128/Add.3) was reflected in a new version of the draft Protocol. Also at its sixth session, the Ad Hoc Committee had decided to devote the informal consultations to be held during its seventh session, from 18 to 21 January 2000, to consideration of the Trafficking in Persons Protocol, and common provisions of that instrument and the Migrants Protocol. The recommendations of the informal consultations were submitted to the Ad Hoc Committee by their chairmen.

### 3. Elaboration of the additional international legal instrument against illegal trafficking in and transporting of migrants

38. The Ad Hoc Committee discussed the draft migrants Protocol at its fourth session. It based its work on a document containing the revised text of the draft Protocol (A/AC.254/4/Add.1/Rev.1), which had incorporated the progress achieved during the preliminary review of the draft Protocol carried out at the first session of the Ad Hoc Committee. At its fourth session, the Ad Hoc Committee carried out a first reading of articles 1-5 of the revised draft text. The progress achieved by the Ad Hoc Committee was reflected in a new version of the draft Protocol. The consideration of certain provisions in the draft text gave rise to a general discussion that revolved around the purpose and focus of the instrument. Some representatives expressed concern about the potential unintentional misuse of the Protocol, which could have an adverse effect on migrants, and in that context questioned its desirability. In that connection, several references were made to the mandate of the Ad Hoc Committee, as contained in General Assembly resolutions 53/111 and 53/114. The Chairman summarized the discussion by reiterating the understanding that the Protocol was inextricably linked to the Convention, that its focus was on the prevention and suppression of smuggling of migrants and that special attention should be paid to establishing an abundantly clear distinction between the criminalization of trafficking and the protection of the victims of that activity.

39. At the fourth session of the Ad Hoc Committee, the representative of Ecuador made a statement on behalf of the Group of Latin American and Caribbean States. The Group expressed its appreciation to the United Nations High Commissioner for Human Rights for the informal note she had submitted to the Ad Hoc Committee (A/AC.254/16) and recalled that the Protocol should be directed at combating illegal trafficking in migrants and protecting the rights of migrants. The Group also shared the view expressed by the High Commissioner that respect for the basic rights of migrants did not prejudice or otherwise restrict the sovereign right of all States to decide who should or should not enter their territories. According to the Group, the Protocol could not be used as an instrument for criminalizing migration, which was a social and historical phenomenon, nor should it stimulate xenophobia, intolerance and racism.

40. Issues related to the draft Protocol were also discussed during the informal consultations held at the fifth session of the Ad Hoc Committee.

41. At its sixth session, the Ad Hoc Committee discussed articles 7-19 of the draft Protocol. It based its work on a document containing the revised text of the draft Protocol (A/AC.254/4/Add.1/Rev.3) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.15). The Ad Hoc Committee completed its first reading of the draft Protocol, aware of the discussion in the informal consultations on the common provisions

between the draft Convention and the draft Protocols. The progress achieved on the draft Protocol by the Ad Hoc Committee at its sixth session was reflected in a new version of the draft Protocol.

42. The Ad Hoc Committee discussed the draft Migrants Protocol at its eighth session. It based its work on a document containing the revised text of the draft Protocol (A/AC.254/4/Add.1/Rev.4) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.21). The Ad Hoc Committee continued its second reading of the draft Protocol. The progress achieved in negotiating the draft Protocol by the Ad Hoc Committee at its eighth session was reflected in a new version of the draft Protocol.

### 4. Elaboration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

43. The Ad Hoc Committee had decided to devote one day at its third session to the consideration of the draft Firearms Protocol. The Ad Hoc Committee based its work on a document containing the revised text of the draft Protocol (A/AC.254/4/Add.2/Rev.1) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.5). The Ad Hoc Committee had carried out a first reading of articles 1-8 of the draft text at its first session. Pursuant to a suggestion by its Chairman, the Ad Hoc Committee completed the first reading of the draft text, beginning with article 9. The Ad Hoc Committee refrained from considering the final clauses of the draft instrument (i.e. articles 18 *ter*-19 *bis*), in the interest of consistency and of making full use of the time available to it, as those articles were considered standard in international instruments and depended on the outcome of the negotiations on similar provisions of the Convention. The progress achieved on the draft Protocol by the Ad Hoc Committee at its sixth session was reflected in a new version of the draft Protocol.

44. The Ad Hoc Committee discussed the draft Protocol at its fifth session. It based its work on a document containing the revised text of the draft Protocol (A/AC.254/4/Add.2/Rev.2) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.10). The Ad Hoc Committee carried out a second reading of articles II-V and VIII of the revised draft text. The progress achieved by the Ad Hoc Committee was reflected in a new version of the draft Protocol.

45. The Ad Hoc Committee discussed the draft Protocol at its seventh session. It based its work on a document containing the revised text of the draft Protocol (A/AC.254/4/Add.2/Rev.3) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.18). The Ad Hoc Committee was informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127. Following a discussion on the matter, the Ad Hoc Committee decided to remove references to explosives from the draft Protocol. The Ad Hoc Committee completed its second reading of the draft Protocol, aware of the discussion in the informal consultations on the common provisions between the draft Convention and the draft Protocols thereto. The progress achieved on the draft Protocol by the Ad Hoc Committee at its seventh session was reflected in a new version of the draft Protocol.

46. At its seventh session, the Ad Hoc Committee had decided to devote the informal consultations to be held during its eighth session, from 22 to 25 February 2000, to consideration of the additional international legal instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The

recommendations of the informal consultations were submitted to the Ad Hoc Committee by their chairmen.

### 5. Implementation of General Assembly resolution 54/128, entitled "Action against corruption"

47. At its sixth session, the Ad Hoc Committee had decided to consider the implementation of General Assembly resolution 54/128, entitled "Action against corruption", at its seventh session. In that resolution, the Assembly had requested the Ad Hoc Committee to explore the desirability of an international instrument against corruption, either ancillary to or independent of the United Nations Convention against Transnational Organized Crime, to be developed after the finalization of the Convention and the three Protocols thereto, and to present its views to the Commission on Crime Prevention and Criminal Justice.

48. The Ad Hoc Committee was of the view that an effective international legal instrument against corruption was desirable. It agreed that such an international instrument should be independent of the United Nations Convention against Transnational Organized Crime and that its drafting should commence following the completion of the negotiations on the draft Convention and the draft Protocols thereto. The Ad Hoc Committee was of the view that the terms of reference and outline of scope of the new instrument should be based on sound preparatory work, which would include a thorough review and analysis of all relevant international instruments and recommendations. The analysis should be undertaken by the Secretariat in consultation with Member States and should be submitted to the Commission on Crime Prevention and Criminal Justice at its tenth session. The Ad Hoc Committee discussed whether the General Assembly should be requested to extend the current mandate of the Ad Hoc Committee to enable it to develop the new instrument, on the basis of a recommendation by the Commission to the General Assembly. It was noted that, in considering that matter, it would be advisable for the Commission to take into account the experience and expertise acquired by the Ad Hoc Committee in developing the draft Convention and its draft Protocols, as well as the need to build on the success of the Ad Hoc Committee in dealing with such complex matters. It was agreed that the Ad Hoc Committee would transmit its views and recommendations on the implementation of resolution 54/128 to the Commission at its ninth session for appropriate action.

## III. Action by the Commission

49. The Commission may wish to provide its views on the progress achieved by the Ad Hoc Committee thus far in the implementation of its mandate. In particular, the Commission may wish to take appropriate action with regard to the implementation of General Assembly resolution 54/128, in the light of the views of the Ad Hoc Committee expressed above. The Commission may also wish to explore ways of supporting the work of the Ad Hoc Committee in order to ensure that the latter performs its assigned tasks in accordance with the terms prescribed by Member States in the pertinent General Assembly resolutions.